

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

PUBLIC EMPLOYEES FOR ENVIRONMENTAL)
RESPONSIBILITY,)
2000 P Street NW, Suite 240)
Washington, D.C. 20036)

Plaintiff,)

v.)

NATIONAL PARK SERVICE,)
1849 C Street, NW)
Washington, D.C. 20240)

Defendant.)

Civil Action No.

COMPLAINT

PRELIMINARY STATEMENT

1. This action is brought under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, *et seq.*, as amended, in order to compel the National Park Service (“NPS”) to disclose records withheld wrongfully after a FOIA request from Plaintiff. FOIA requires that federal agencies respond to public requests for documents in order to increase public understanding of the workings of government and to provide access to government information.
2. The records sought stem from a FOIA request on February 29, 2012 for documents relating to the status or outcome of the NPS Director’s review of issues regarding religious structures, literature, and signs in the Petroglyph National Monument and the Grand Canyon National Park.
3. Over the past decade, NPS has addressed media inquiries regarding religious structures, literature, and signs, as well as other controversies involving displays on national park lands, by promising a Director’s Review. In February 2004, NPS Chief of Communications David

Barna distributed talking points for reporters stating that a high-level policy review would be conducted regarding the sale of a religious book at Grand Canyon National Park. On March 3, 2011, the NPS stated in a letter to Plaintiff that the Director would review the presence of a Buddhist Stupa in Petroglyph National Monument and Old Testament quotations at Grand Canyon National Park. However, the outcome of these Director's Reviews have not been publicly announced.

4. In its February 29, 2012 FOIA request, Plaintiff sought any documents that reflect the status or outcome of the NPS Director's review of: (1) the presence of a Tibetan Buddhist stupa within Petroglyph National Monument (limited to documents generated after April 1, 2011); (2) the decision to continue offering the book *Grand Canyon: A Different View*, by Tom Vail, for sale in park bookstores and museums within Grand Canyon National Park (limited to records from November 9, 2006 to present); and (3) the July 2003 decision by then-Deputy Director Donald Murphy to order the installation of three signs bearing quotes from the Book of Psalms in the Old Testament at Lookout Studio, in the Grand Canyon Village of the South Rim, Hermits Rest, South Rim, and Watchtower at Desert View (request for all documents from the date of that decision to present).
5. Plaintiff Public Employees for Environmental Responsibility ("PEER") is a non-profit organization with tax-exempt status dedicated to research and public education concerning the activities and operations of the federal government. Plaintiff requested the subject records in order to learn how decisions are being made within the agency and what decisions regarding religious displays and literature have been made.

6. The agency acknowledged Plaintiff's February 29 request (No. 12-368) in an e-mail from NPS FOIA Officer, Charis Wilson, on March 5, 2012, and stated that a response should be expected on April 13, 2012, after a ten day extension to retrieve documents. On April 13, 2012, Plaintiff received an e-mail from the NPS FOIA officer stating that a response was being prepared and could be expected within one week. On May 25, 2012, Plaintiff received another e-mail stating that the request was being assigned to subject matter experts for review. The NPS FOIA Officer sent an e-mail on June 8, 2012, indicating that a response was still indefinitely postponed pending a meeting with an official responsible for assigning the FOIA requests to others for review. Plaintiff has yet to receive any records pursuant to this request.
7. NPS has constructively denied Plaintiff's February 29, 2012 request by failing to produce records within twenty (20) working days, or within the 10 day extension taken by NPS, as required by 5 U.S.C. § 552(a)(6)(A)(i) and 5 U.S.C. § 552(a)(6)(B)(i).
8. NPS's conduct is arbitrary and capricious and amounts to a denial of Plaintiff's FOIA request. NPS's conduct frustrates Plaintiff's efforts to educate the public regarding ongoing activities at NPS and is a violation of FOIA.
9. Plaintiff seeks a court order requiring NPS to produce immediately the documents sought in the February 29, 2012 FOIA request, as well as other appropriate relief.

JURISDICTION AND VENUE

10. This Court has jurisdiction over this action pursuant to the Freedom of Information Act, 5 U.S.C. § 552(a)(4)(B). This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question jurisdiction).

11. This Court has the authority to grant declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*
12. This Court has the authority to award costs and attorneys' fees under 28 U.S.C. § 2412 and 5 U.S.C. § 552(a)(4)(E).
13. Venue is properly vested in this Court pursuant to 28 U.S.C. § 1391(e), because the Defendant resides in this district and a substantial part of the events and omissions which gave rise to this action occurred in this district. Venue is also proper under 5 U.S.C. § 552(a)(4)(B).

PARTIES

14. Plaintiff PEER is a non-profit public interest organization with its main office located in Washington, D.C. and field offices located in Arizona, California, Colorado, Florida, Massachusetts, New Jersey, and Tennessee.
15. PEER is not a commercial enterprise for purposes of the fee waiver provisions of FOIA. *See* 5 U.S.C. § 552(a)(4)(A)(iii). Among other public interest projects, PEER engages in advocacy, research, education, and litigation relating to the promotion of public understanding and debate concerning key current public policy issues. PEER focuses its efforts on the environment, public lands, natural resources management, public funding of environmental and natural resource agencies, and ethics in government.
16. Informing the public about these important public policy issues is central to PEER's mission. PEER educates and informs the public through news releases to the media, PEER's website, www.peer.org, which draws between 1,000 and 10,000 viewers per day, and PEER's

newsletter, which has a circulation of approximately 20,000, including 1,500 environmental journalists.

17. Defendant NPS is an agency of the United States as defined by 5 U.S.C. § 552(f)(1), and is charged with the duty to provide public access to documents in its possession consistent with the requirements of FOIA, and is denying Plaintiff access to its records in contravention of federal law.

FACTS

18. On February 29, 2012, Plaintiff submitted a FOIA request seeking information regarding the NPS Director's review of religious structures, literature, and signs in Petroglyph National Monument and Grand Canyon National Park. Specifically, Plaintiff sought any documents that reflect the status or outcome of the NPS Director's review of: (1) the presence of a Tibetan Buddhist stupa within Petroglyph National Monument (limited to documents generated after April 1, 2011); (2) the decision to continue offering the book *Grand Canyon: A Different View*, by Tom Vail, for sale in park bookstores and museums within Grand Canyon National Park (limited to records from November 9, 2006 to present); and (3) the July 2003 decision by then-Deputy Director Donald Murphy to order the installation of three signs bearing quotes from the Book of Psalms in the Old Testament at Lookout Studio, in the Grand Canyon Village of the South Rim, Hermits Rest, South Rim, and Watchtower at Desert View (request is for all documents from the date of that decision to present).

19. On March 5, 2012, NPS FOIA Officer, Charis Wilson, acknowledged Plaintiff's FOIA request and stated that a response could be expected by April 13, 2012 after a ten day extension to collect documents in multiple offices.
20. On April 13, 2012, Plaintiff received an e-mail from the NPS FOIA Officer stating that a response was being prepared, but that it would not be complete for another week.
21. On May 25, 2012, Plaintiff inquired into the status of the FOIA request and received another e-mail from NPS stating that the request had not yet been assigned to subject matter experts for review.
22. On June 8, 2012, NPS sent an e-mail, indicating that a response was indefinitely postponed pending a meeting regarding the FOIA request scheduled for the upcoming week.
23. Plaintiff did not receive any documents from NPS within the statutory timeframe (20 work days), or within the 10 day extension taken by NPS, as is required by 5 U.S.C. § 552(a)(6)(A)(i) and 5 U.S.C. § 552(a)(6)(B)(i).
24. Plaintiff still has not received responsive documents from NPS despite the requirements of FOIA.
25. Plaintiff has fully exhausted its administrative remedies for its FOIA request.

Administrative remedies are deemed exhausted whenever an agency fails to comply with the applicable time limits, as stated by 5 U.S.C. § 552(a)(6)(C).
26. Plaintiff now turns to this Court to enforce the remedies and public access to agency records guaranteed by FOIA.

27. President Barack Obama issued an Executive Memo, on January 21, 2009, declaring the following policy: “The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails. The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears....All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government. The presumption of disclosure should be applied to all decisions involving FOIA.”

CAUSE OF ACTION

Count 1: Violation of the Freedom of Information Act

28. Plaintiff repeats the allegations in paragraphs 1 through 27.
29. NPS’s failure to respond to Plaintiff’s FOIA request, or to provide the requested information is a violation of FOIA, 5 U.S.C. § 552, and the agency’s own regulations promulgated thereunder.
30. Plaintiff’s FOIA request has been constructively denied and information responsive to Plaintiff’s FOIA request has been improperly withheld.

RELIEF REQUESTED

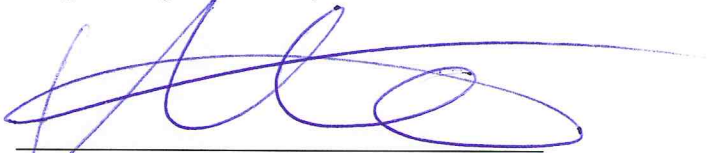
WHEREFORE, Plaintiff respectfully requests and prays that this Court:

- i. Enter an Order declaring that NPS has wrongfully withheld the requested agency records;

- ii. Issue a permanent injunction directing NPS to disclose to Plaintiff all wrongfully withheld documents;
- iii. Maintain jurisdiction over this action until NPS is in compliance with FOIA, APA and every order of this Court;
- iv. Award Plaintiff its attorney fees and costs pursuant to 5 U.S.C. § 552(a)(4)(E);
and
- v. Grant such additional and further relief to which Plaintiff may be entitled.

Dated: June 12, 2012

Respectfully submitted,



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